

JUDGE HERBERT J. HUTTON

Judge Hutton was born in 1937 in Philadelphia, Pennsylvania. He received an A.B. from Lincoln University in 1959 and a J.D. from Temple University in 1962. From 1963 to 1988, Judge Hutton was in private practice in Philadelphia. Judge Hutton was appointed to the United States District Court for the Eastern District of Pennsylvania on August 12, 1988.

PRELIMINARY GENERAL MATTERS

1. Correspondence with the Court.

Judge Hutton permits correspondence under the circumstances set forth in his standard Notice to Counsel, which is routinely sent promptly after assignment of a case to Judge Hutton. A copy of the Notice is attached. Otherwise, all other communications with the Court should be made by the filing of pleadings, motions, applications, briefs, or legal memoranda.

2. Communications with Law Clerks.

Judge Hutton does not permit counsel to communicate with his law clerks.

3. Telephone Conferences.

Judge Hutton has no policy or preference with respect to telephone conferences for matters such as pretrial conferences, scheduling, and the like. He prefers that such matters be managed by his Deputy Clerk.

4. Oral Arguments and Evidentiary Hearings.

Judge Hutton does not set aside any certain days or times for oral arguments or evidentiary hearings.

5. Pro Hac Vice Admissions.

Judge Hutton prefers that a written motion for pro hac vice admission be made on the day of the first appearance of counsel to be admitted.

CIVIL CASES

Pretrial Procedures

1. Pretrial Conferences.

Judge Hutton, if requested by all parties, will conduct status, pretrial, or settlement conferences. Judge Hutton uses a standard form of scheduling order pursuant to Rule 16. A copy of this Order is attached.

Continuances and Extensions

1. General Policy.

Judge Hutton has a general policy of adhering to originally scheduled dates unless a compelling reason is presented

that justifies a change. This policy applies to briefing schedules, oral argument, evidentiary hearings, discovery deadlines, and trial dates.

2. Requests for Extensions and Continuances.

Counsel should advise the Court immediately upon the occurrence of any compelling reason justifying an extension or a continuance of any originally scheduled date. Any request for an extension or a continuance should be made by formal motion.

General Motion Practice

1. Oral Argument on Motions.

Judge Hutton hears oral argument on motions only when it is requested by counsel.

2. Reply and Surreply Briefs.

Reply and surreply briefs should be filed only if absolutely necessary.

3. Chambers Copies of Motion Papers.

Judge Hutton prefers that a courtesy copy of motion papers be sent to his chambers, and he encourages this practice.

Discovery Matters

1. Length of Discovery Period and Extensions.

Judge Hutton has no general policy regarding length of time usually permitted for discovery. Since the Rule 16 scheduling is usually determined three to four months into the case, Judge Hutton usually allows approximately three months measured from that date to complete discovery.

2. Discovery Conferences and Dispute Resolution.

Judge Hutton normally does not hold discovery conferences, but he does permit telephone conferences to resolve discovery disputes that arise during depositions.

3. Confidentiality Agreements.

Judge Hutton does not have a standard practice or policy with respect to confidentiality orders. He does not favor those confidentiality orders that, by mutual agreement of counsel, place virtually all discovery materials under a confidentiality/non-disclosure status.

4. Expert Witnesses.

Judge Hutton does not generally require written expert reports or expert depositions as Rule 26 does not require either.

Judge Hutton usually leaves these matters for agreement by counsel. It is Judge Hutton's policy to have experts identified 90 to 120 days after the filing of a complaint.

Settlement

1. General Approach to Settlement and Non-Jury Cases.

Judge Hutton believes that the Court's involvement in settlement conferences may be helpful, and he will become involved in jury cases at the request of all counsel. Judge Hutton will participate in settlement negotiations in non-jury cases only if all counsel consent and insist. Otherwise, in non-jury cases, he will refer settlement negotiations to a magistrate.

2. Referral of Settlement Negotiations to Another District Court Judge.

Judge Hutton rarely refers settlement negotiations to another district court judge.

Arbitration

1. General Approach to Arbitration Cases.

Judge Hutton does not have any standard procedure or practices for arbitration cases that differ from cases certified as involving more than \$100,000.

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2. Scheduling of Trial De Novo from Arbitration.

Upon demand for trial de novo from an arbitration award, Judge Hutton's practice

is to put the case on the top of the active trial list. Judge Hutton does not have any special practices or procedures for de novo arbitration cases with respect to motions, pretrial memoranda, exhibits, or additional time for discovery.

Proposed Final Pretrial Memoranda

1. Required Form of Pretrial Memoranda.

Unless specifically provided for by separate order in a particular case, Judge Hutton has no requirements for pretrial memoranda other than those set forth in the standard Rule 16 notice to counsel.

Injunctions

1. Scheduling and Expedited Discovery.

Judge Hutton will promptly list any injunction matters assigned to him. He has no standard practice for handling expedited discovery in injunction matters.

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2. Proposed Findings of Fact and Conclusions of Law.

Judge Hutton requires submission of proposed findings of fact and conclusions of law in injunction cases as early as possible.

Trial Procedure

1. Scheduling of Cases.

Judge Hutton routinely places all cases in his trial pool. Cases are not assigned a date certain and very rarely are specially listed.

2. Cases Involving Out-Of-Town Parties or Witnesses.

Trial scheduling by Judge Hutton does not change by the presence of out-of-town parties or witnesses. Judge Hutton leaves the scheduling of witnesses to counsel.

3. Notetaking by Jurors.

Judge Hutton permits notetaking by jurors, but he does not encourage it.

4. Trial Briefs.

Judge Hutton encourages the submission of trial briefs.

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5. Voir Dire.

Voir dire in civil cases is conducted by counsel. Judge Hutton will intervene if the progress of voir dire is too slow. Judge Hutton's Deputy Clerk is normally present while counsel conduct voir dire.

6. Side Bars.

Judge Hutton prefers that side-bar conferences be avoided.

7. In Limine Motions.

Judge Hutton prefers that most in limine motions be held until an appropriate point in trial. If an in limine motion must be filed in order to allow trial to proceed, it should be filed as early as possible.

8. Examination of Witnesses Out of Sequence.

Judge Hutton will permit counsel to take witnesses out of turn for the convenience of the witness, subject, of course, to objection by opposing counsel.

9. Opening Statements and Summations.

Judge Hutton has found that 15 minutes is usually adequate for an opening and 30 minutes is usually adequate for a summation.

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10. Examination of Witnesses or Argument
by More Than One Attorney.

Only in an extreme and rare circumstance will Judge Hutton permit more than one attorney for a party to examine different witnesses or argue different points before the Court.

11. Examination of Witnesses Beyond
Redirect and Recross.

Judge Hutton does not have any general policy on further examination of a

witness after redirect and recross have been completed. Where appropriate, he will allow it, but he will not permit any repetition or rehashing.

12. Videotaped Testimony.

Videotaped testimony should start with the witness being sworn. Objections should be given to the Court well in advance of the tapes being offered.

13. Reading of Material into the Record.

Judge Hutton has no special practice or policy of reading into the record stipulations, pleadings, or discovery material. He will permit it when necessary.

14. Preparation of Exhibits.

Judge Hutton requires that exhibits be pre-marked and pre-exchanged. Two copies of trial exhibits should be

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provided to the Court in cases involving large numbers of documents and in non-jury cases.

15. Offering Exhibits into Evidence.

Judge Hutton prefers that counsel offer exhibits into evidence at the close of testimony by the witness testifying about the exhibit.

16. Directed Verdict Motions.

Judge Hutton prefers that directed verdict motions (or Rule 41(b) motions to dismiss in non-jury trials) be in writing. Oral argument, if necessary, will be requested by the Court.

17. Proposed Jury Instructions and Verdict Forms.

In jury cases, Judge Hutton requires proposed jury instructions to be filed with the Court before the commencement of trial. It is not necessary that counsel submit standard points given in all civil and criminal cases, or nearly all civil and criminal cases, and they can be omitted. Judge Hutton will permit submission of supplemental proposed jury instructions up to the time of the charge conference preceding the jury charge on the record. Judge Hutton conducts the charge conference on proposed jury instructions from the bench and outside the presence of the jury.

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18. Proposed Findings of Fact and Conclusions of Law.

Judge Hutton prefers that proposed findings of fact and conclusions of law be submitted in non-jury cases at the time the testimony commences.

19. Offers of Proof.

Judge Hutton requires the parties to inquire of each other prior to trial as to an offer of proof as to any witness or exhibit expected to be offered. Judge Hutton will not interrupt

trial proceedings on the application of any party for an "offer of proof."

Jury Deliberations

1. Written Jury Instructions.

Judge Hutton provides the jury with a written copy of the jury instructions.

2. Exhibits in the Jury Room.

Judge Hutton permits all exhibits received into evidence to go out to the jury.

3. Handling of Jury Requests to Read Back Testimony or Replay Tapes.

Judge Hutton will advise the jury that testimony is usually not in transcript form to give them. However, if a

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transcript is available, he will consider reading appropriate portions requested by the jury. He will allow tapes and videotapes to be replayed.

4. Availability of Counsel During Jury Deliberations.

Judge Hutton requires counsel to remain in the courthouse during jury deliberations.

5. Taking the Verdict-and Special Interrogatories.

Judge Hutton usually submits interrogatories to the jury in civil cases.

6. Polling the Jury.

Judge Hutton has no standard practice for polling the jury in civil cases. He allows it in all criminal cases.

7. Interviewing the Jury.

Judge Hutton permits each juror to decide whether to agree to an interview by counsel after the verdict has been recorded and the jury discharged.

CRIMINAL CASES

1. Approach to Oral Argument and Motions.

Judge Hutton has no preference regarding oral arguments on motions in criminal cases.

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2. Pretrial Conferences.

Judge Hutton generally holds pretrial conferences in criminal cases when motions are filed and have been answered.

3. Voir Dire.

Judge Hutton conducts voir dire in criminal cases and permits counsel to submit suggested questions to him.

4. Sentencing Memoranda.

Judge Hutton permits the submission of sentencing memoranda by both the

government and the defense.

OTHER GENERAL MATTERS

Judge Hutton generally does not expect to receive copies of appellate briefs when a decision rendered by him is appealed.